

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No.: 10/760,179
Confirmation No. 8074

Filing Date: January 16, 2004

Applicant: WILLIAM V. ALCINI, et al.

Group Art Unit: 2837

Examiner: Edgardo San Martin

Title: DYNAMIC EXHAUST SYSTEM FOR ADVANCED
INTERNAL COMBUSTION ENGINES

Attorney Docket: 2001U-001640

Mail Stop APPEAL BRIEF-PATENTS
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

REPLY BRIEF

Sir:

This is in reply to the Examiner's Answer mailed August 1, 2007.

I. STATUS OF CLAIMS

No claims have been amended, added or canceled. Originally submitted claims 1-24 stand rejected and are the subject of this Appeal.

II. GROUND OF REJECTION TO BE REVIEWED ON APPEAL

The grounds for rejection to be reviewed are:

- 1) Anticipation of claims 1-24 under 35 U.S.C. §102(b) by
Yashiro et al., U.S. Patent No. 5,614,699 (Yashiro).

III. ARGUMENT

The Examiner has Failed to Rebut Appellants' Position on the Effect of the Preamble of the Pending Claims

In his Answer, the Examiner has failed to address the clearly applicable case precedent cited in Appellants' Brief for the proposition that Appellants' claim preamble is referenced in further claim limitations and is therefore a real limitation that is not taught by the applied reference.

Again, there is no disclosure or suggestion of at least the following limitations from the independent claims:

Independent Claims 1 and 16

"Exhaust system for a non-convention internal combustion power source exhibiting, during operation, larger ranges of acoustic frequency, flow rate or pressure in exhaust flow than found in conventional internal combustion power sources"

Independent Claims 6 and 21

"Exhaust system for an internal combustion power source exhibiting discontinuities in exhaust gas flow during operation"

The Examiner's Reliance on the Drawings of Yashiro to Establish Anticipation is Simply Wrong.

In his Answer, the Examiner alleges that he "considers that Figure 8 and Figures 6, 12 and 24 of Yashiro et al. clearly teach placing the valve (16) near or substantially at a mid-point of the exhaust system as described in the claims."

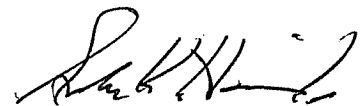
However, a review of the Yashiro reference reveals that Figures 6, 8, 12 and 24 are drawings of mufflers, not of an exhaust system as called for in the valve positioning language of dependent claims 3-5, 9-14 and 18-20. While the drawing Figures cited by the Examiner may arguably show a valve at the mid-point of a muffler, the Yashiro reference is total devoid of any teaching of the claimed locations of the valve with respect to an exhaust system.

CONCLUSION

The Examiner's rejections of claims 1-24 under 35 U.S.C. §102(b) are improper. The cited reference fails to disclose or suggest all the limitations of Appellants' claims. Accordingly, it is submitted that the Examiner has failed to establish a *prima facie* case of anticipation, and the Examiner's rejection of claims 1-24 should be reversed.

Respectfully submitted,

Dated: October 1, 2007

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